

Before the
COPYRIGHT ROYALTY BOARD
United States Copyright Office
Washington, DC

In re

Distribution of Digital Audio Recording
Royalty Funds

CONSOLIDATED
Docket No. 2008-3 CRB DD
(2007-2011 SRF)

REPLY TO RESPONSE IN OPPOSITION TO
AARC’S MOTION TO DISMISS EUGENE CURRY

The Alliance of Artists and Recording Companies, Inc. (“AARC”), on its behalf and that of its Participants,¹ hereby submits its reply to Eugene Curry’s (“Curry”) ² response to AARC’s motion to dismiss Curry from the 2007-2011³ Digital Audio Recording Technologies (“DART”) Sound Recordings Fund Copyright Owners Subfund (“SRF/CO Subfund”) royalties distribution proceeding for failure to file a written direct statement, as required by 37 C.F.R. § 351.4, and, so, for failure to provide any supporting evidence of the copyright ownership of any sound recordings with 2008 and 2010 sales. 37 C.F.R. § 351.4 (2019).

¹ AARC represents tens of thousands of featured recording artists and sound recording copyright owners (“AARC Participants”), with combined repertoires of millions of sound recordings and billions of sales. AARC, a non-profit organization formed to administer DART royalties, is the leading common agent representing the interests of featured recording artists and sound recording copyright owners in DART royalty proceedings. AARC currently represents over 440,000 featured recording artists and over 16,000 labels. AARC has filed valid claims to the 2007-2010 SRF/CO Subfunds at issue and represents all the 2007-2011 DART SRF/CO parties except for two non-settling parties in this proceeding.

² Curry has identified himself in 2008 and 2010 DART SRF/CO filings, as well as in this consolidated proceeding, in a variety of ways, including “Eugene Lambchops Curry,” “Eugene ‘Lambchops’ Curry,” and “Lambchops.” In the eCRB he is listed as “Curry, Eugene.” Based on Curry’s participation in past proceedings, we know that he uses the distribution label name, “Tajai Music.” To simplify matters, hereinafter, we will use “Curry” to refer to all variations of this party’s names.

³ According to the CRB records, Curry only filed claims to the 2008 and 2010 DART funds. A party who has not filed claims seeking to receive royalty payments for specific royalty years cannot participate in the subsequent proceedings of dispute resolution in case a controversy exists. See 17 U.S.C. § 1007 (2016). Therefore, Curry is not eligible to claim DART funds for any years other than the 2008 and 2010 royalty years.

Pursuant to the Copyright Royalty Board's ("CRB") directive, AARC filed its written direct statement on October 3, 2019. Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order, *In re* Distribution of Digital Audio Recording Royalty Funds, Docket No. CONSOLIDATED 2008-3 CRB DD (2007-2011 SRF) (Feb. 27, 2019) ("Scheduling Order"); Direct Case of Alliance of Artists and Recording Companies, Inc., *In re* Distribution of Digital Audio Recording Royalty Funds, Docket No. CONSOLIDATED 2008-3 CRB DD (2007-2011 SRF) (Oct. 3, 2019) ("AARC Direct Case"). To date, however, Curry has not filed a written direct statement. It is now over 30 days since the written direct statements were due. On October 30, 2019, AARC filed a motion to dismiss Curry for his failure to satisfy a key, if not the key, element of a DART proceeding, which is to file a written direct statement. A written direct statement is the vehicle by which each party can establish distribution (sales) of any of its sound recordings and so, its entitlement to any share of the royalties in controversy.

Curry's response provides nothing more than baseless and absurd excuses and accusations. AARC will address each of these excuses and accusations below:

1. "AARC filed there [sic] written direct statement on the final day of October 3, 2019 at 3:59. They could have filed February 29, 2019."

This argument is nonsensical. The due date set by the CRB for filing written direct statements was October 3, 2019. Scheduling Order at 5. AARC met the deadline.

2. "AARC since DECEMBER of last year, has consistently file [sic] motions for motions for dismissal and opposition's [sic] to my claims to share in the sharing (\$1000) of the

funds. It took me six (6) months just to fight to participate while caring for a breast and ovarian cancer love one.”

AARC filed motions to dismiss Curry’s defective and late petitions to participate as is permitted under the CRB’s regulations. Curry’s initial filing failed to demonstrate “significant interest” in this 2007-2011 DART SRF distribution proceeding and was, in fact, dismissed by the CRB. 17 U.S.C. § 803(b)(2)(C) (2016); 37 C.F.R. § 351.1(b), (c) (2019); Order Granting AARC Motion to Reject Eugene Curry’s Defective Filings and Dismissing Eugene Curry, In the Matter of Distribution of Digital Audio Recording Royalty Funds, CONSOLIDATED Docket No. 2008-3 CRB DD (2007-2011 SRF) (Feb. 27, 2019) (“Order Dismissing Curry”). Thereafter, Curry petitioned the CRB to accept a late petition to participate. AARC objected, specifying its legal and factual basis for its objection, as is its right to do so. 37 C.F.R. § 303.4 (2019). Therefore, this accusation is baseless.

3. “During the volunteer [sic] settlement negotiations AARC didn’t include me nor did they bother to contact me period . . . So I was the only claimant that was discriminated against. (Not invited to the ‘party’). So technically I’m not a Non-Settling party, just still an individual claimant pro-se. It is my understanding that AARC and Circle God Network were involved in talks where the two parties couldn’t agree.”

The “voluntary negotiation period,” is just that – voluntary. 37 C.F.R. § 351.2 (2019). The regulation does not impose an obligation on any parties to negotiate or reach a settlement. Id. AARC did not contact Curry nor circle god network inc d/b/a david powell (“CGN”) because, based on AARC’s research, they are not entitled to any portion of the royalties at issue. CGN

contacted AARC requesting an offer but no offer was made. It has always been AARC's policy not to reward claimants who file baseless claims.

4. "So AARC filed on the deadline date to file written direct statement. On that same date October 3, 2019 Discovery kicked in also. PTP also started for the 2014 DART funds. So I filed and was approved, at the same time CRB help department I believe after speaking to them said written direct statement wasn't necessary because it hadn't gotten to that phase yet where we both misunderstood confusing the two PTP's for the written direct statement."

Curry seems to be accusing the CRB of giving him faulty information. However, it is not the CRB's responsibility to advise Curry as to the procedural requirement of a DART distribution proceeding. All parties appearing before the CRB are expected to be familiar with the statute and regulations. 37 C.F.R. § 303.6(e)(2) ("The party's signature will constitute the party's certification that, to the best of his or her knowledge and belief, there is good ground to support the document, and that it has not been interposed for purposes of delay."). Moreover, Curry has been participating in DART proceedings for decades and so, should be well versed in the process. He has even been dismissed from a DART distribution proceeding in the past for neglecting to file a written direct statement. Determination and Order at 2, 3, *In re Distribution of 2013 Digital Audio Recording Royalty Funds*, Docket No. 14-CRB-0006 DART SR (CO/FA) (2013) (Mar. 24, 2016). Therefore, Curry's excuse rings hollow.

As AARC has noted in its past motion, Curry has a long history of participating in the DART Musical Works Fund and Sound Recordings Fund distribution proceedings, and therefore, should be familiar with the CRB's distribution proceeding requirements. Motion

to Reject Eugene Curry's Defective Filing at 12, *In re* Distribution of Digital Audio Recording Royalty Funds, Docket No. CONSOLIDATED 2008-3 CRB-DD (2007-2011 SRF) (Feb. 1, 2019). He has filed in DART proceedings since the inception of the AHRA in 1992. See id. at 13-15 (discussing Curry's past participation in the 2008 and 2013 Copyright Owners Subfunds as well as the 1992-1994 and 1995-1998 Musical Works Funds distribution proceedings, which shows a pattern of failing to adhere to CRB regulations and orders). Even more important than Curry's extensive experience with DART proceedings, is the requirement that participants in DART distribution proceedings should be familiar with the statute and regulations. See DART Factsheet on Filing Claims for Royalty Distribution, Copyright Office, <http://www.copyright.gov/carp/dartfact.html> (last visited on Jul. 4, 2014) [<https://web.archive.org/web/20140704090450/http://www.copyright.gov/carp/dartfact.html>] (provided as Attachment 1). The Copyright Arbitration Royalty Panel ("CARP") Fact Sheet directed DART participants to review the regulations governing DART proceedings before even filing their initial claims to ensure that they comply with regulatory and statutory mandates.) It is well-established that the CRB, as the successor to the CARP, will act in accordance with prior determinations and *interpretations* of the CARP. This regulation further enhances the position that Curry should not be excused by his personal misunderstanding of the procedural requirements. 17 U.S.C. § 803(a)(1) (2016) (emphasis added).

5. "So as an individual after seeing ARRC [sic] 209 page submission, I filed for

Discovery certain 'PROOF OF EVIDENCE, from AARC, and Electronically Filed Docket:

CONSOLIDATED 2008-3 CRB DD (2007-2011 SRF) Filing Date: 11/01/2019 04:19:45 AM

EDT 2 their clients of documentation that was not provided in their sworn testimony and exhibits.”

As AARC noted in the motion to dismiss Curry filed on October 30, Curry filed a motion for discovery request on October 26, 2019. See Motion for Discovery Request of Documents from AARC, Universal and Sony, Docket No. CONSOLIDATED 2008-3 CRB DD (2007-2011 SRF) (Oct. 26, 2019). However, the request is defective for the following reasons:

(1) Curry failed to file a written direct statement, and therefore, should be immediately dismissed from the proceeding and not allowed to move forward to the discovery phase.

See Order Granting AARC's Motion to Dismiss Edward Whitney Mazique's Claims to the Remaining 2% of the 2005 and 2006 Sound Recording Funds at 2, In the Matter of Distribution of the 2005 and 2006 Digital Audio Recording Royalty Funds, Docket No. 2009-4 CRB DD 2005-2006 (Aug. 26, 2010); see also 37 C.F.R. § 351.4;

(2) A discovery request shall be filed between parties which have filed valid written direct statements, but not between a party and the CRB. See 37 C.F.R. § 351.6 (2019).

Instead of serving this discovery request on AARC, Curry filed it with the CRB as a motion, which therefore did not meet the statutory requirement.

Curry's defective discovery motion does not exempt him from failing to file his written direct statement. In fact, it defies logic that a party who neglected to file a written direct statement would try to obtain discovery from a party that filed its statement.

6. “As far as written direct statement my claims have never changed it is and always has been I am the Copyright Owner of the Musical Digital EMBODIMENT RIGHTS TO The

Music performance's as producer and Performer of the second of the two rights in the Sound recording. And of the 2% remaining \$1000.00. Under SUPREME COURT ORDER Rule V Rule 1(1) Order III 1-10 REASONS FOR DELAY: Under certain unusual circumstance, your honors have discretion to decide if a [sic] individual party would be harmed unfairly by a party seeking to dismiss another. Also 37CFR}351.6 351.5(b) 308.106(b)(c) US Code{ 1001.(7)(b)(c)(d)ii (8)351.5(b)351."

This is the most preposterous of all of Curry's excuses. Curry provides no reason, legal or factual, as to why he neglected to file a written direct statement as he is required to do by the CRB's directive and regulations. Scheduling Order at 2, 5; 37 C.F.R. § 351.4. Instead, Curry seems to be arguing that he is not required to file anything because his "claims have never changed it is and always has been I am the Copyright Owner of the Musical Digital EMBODIMENT RIGHTS TO The Music performance's as producer and Performer of the second of the two rights in the Sound recording. And of the 2% remaining \$1000.00." In other words, Curry appears to believe that his bald assertions provide sufficient evidence for the CRB to allocate 2% of \$1,000 to him. However, the CRB has historically rejected requests for royalties based on such "bald assertions." See Order Granting AARC's Motion to Dismiss Edward Whitney Mazique's Claims to the Remaining 2% of the 2005 and 2006 Sound Recordings Funds at 2, *In re* Distribution of the 2005 and 2006 Digital Audio Recording Royalty Funds, Docket No. 2009-4 CRB DD 2005-2006 (Aug. 26, 2010) (denying partial distribution because "other than his own bald assertions, Mr. Mazique" provided no support for his claim that he was entitled to any of the 2005 and 2006 Sound Recordings Fund royalties); Order Granting

AARC's Request for Partial Distribution of Royalties from the 2013 DART Sound Recordings Fund (Copyright Owners and Featured Recording Artists Subfunds, In re Distribution of Digital Audio Recording Royalty Funds, Docket No. 14-CRB-0006 DART SR (CO/FA) (2013) (Dec. 19, 2014) (granting partial distribution to AARC because each of the two parties opposing it failed to provide a "specific estimate of the percentage of those royalties to which he believes he might be entitled").

Finally, Curry alleges that "[u]nder certain unusual circumstance, your honors have discretion to decide if a [sic] individual party would be harmed unfairly by a party seeking to dismiss another." He cites several CRB regulations in support of this absurd allegation. None of the regulations cited address his allegation. Sections 351.5 and 351.6 address discovery in royalty rate and distribution proceedings. 37 C.F.R. § 351.5 (Discovery in royalty rate proceedings) (2019); 37 C.F.R. § 351.6 (Discovery in distribution proceedings). Section 308.106(b)(c) does not exist. Curry also cites sections 1001.(7)(b)(c)(d)ii. It seems that the sections he is attempting to cite are sections 1001(7)(A), (B), (C), and (D)(ii). These sections define an "interested copyright party" and have nothing to do with one party's attempt to dismiss another party. 17 U.S.C. §§ 1001(7)(A), (B), (C), (D)(ii) (2016). Curry, who has failed to satisfy the key element of this distribution proceeding and who from the very beginning of this proceeding has been failing to satisfy the CRB's directives and regulations, is not entitled to protection from dismissal because it would "harm" his case. His argument is irrational and groundless.

In conclusion, throughout this proceeding (and in other DART proceedings in which he

has been involved), Curry has exhibited a pattern of ignoring the statute, regulations and CRB's directives. In the instant proceeding, Curry has again failed to file a written direct statement, which represents the heart of any DART distribution case. Curry has neglected to provide the CRB with even a scintilla of evidence of his entitlement to a portion of the 2008 and/or 2010 DART SRF/CO Subfund royalties. Instead, he has just made uncorroborated claims to 2% of \$1,000. He has done this with utter disregard for the time and effort expended by the CRB and the other parties and so, should be dismissed from the proceeding.

WHEREFORE, in view of the foregoing, AARC respectfully requests the dismissal of Curry from the distribution proceeding of 2007-2011 DART SRF/CO Subfund royalties and the distribution of 100% of the remaining royalties to AARC.

Respectfully submitted,
On Behalf of AARC

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November 8, 2019

In the Matter of
Distribution of 2007-2011
Digital Audio Recording Royalty Funds
CONSOLIDATED Docket No. 2008-3
CRB DD (2007-2011 SRF)
AARC Direct Case

ATTACHMENT 1

The Copyright Arbitration Royalty Panel DART Factsheet on Filing Claims for
Royalty Distribution, Copyright Office,
<http://www.copyright.gov/carp/dartfact.html> (last visited on Jul. 4, 2014)
[<https://web.archive.org/web/20140704090450/http://www.copyright.gov/carp/dartfact.html>]

Background

The Copyright Royalty Tribunal Reform Act of 1993, PL 103-198, eliminated the Copyright Royalty Tribunal (CRT) and replaced it with ad hoc Copyright Arbitration Royalty Panels (CARPs) administered by the Librarian of Congress and the Copyright Office. CARPs adjust copyright royalty rates and distribute royalties to eligible claimants.

How Are DART Royalties Created?

The Audio Home Recording Act of 1992, PL 102-563 created a new statutory obligation under the Copyright Code, chapter 10 of title 17 U.S.C. Under the Act, manufacturers and importers of digital audio recording devices and media who distribute the products in the United States must: (1) file an initial notice upon distribution of such devices and media; and (2) submit quarterly and annual statements of account and royalty fees to the Licensing Division of the Copyright Office, which invests the fees in U.S. Treasury securities until royalties are scheduled for distribution.

Who Can File DART Claims?

Section 1006 of the Act authorizes the distribution of DART royalty payments to any interested copyright party who has filed a claim and whose musical work or sound recording has been: (1) embodied in a digital or analog musical recording lawfully made and distributed; and (2) distributed in the form of digital or analog musical recordings or disseminated to the public in transmissions, during the appropriate royalty payment period. Content of DART Claims Claimants must file an original and two copies. The Copyright Office provides no forms printed or otherwise. All claims must be signed by the claimant or the claimant's representative. The claimant must provide: (1) the full legal names of the person or entity claiming royalty payments; (2) the telephone number, facsimile number, if any, and the full address, including a specific street number and name or rural route, of the place of business of the person or entity; (3) a statement as to how the claimant fits the definition of interested copyright party; (4) a statement indicating the fund and subfund the claim is for:

Sound Recordings Fund:

- Copyright Owners Subfund
- Featured Artist Subfund
- Nonfeatured Musicians Subfund*
- Nonfeatured Artist Subfund*

*Royalties in these two subfunds are distributed by the Copyright Office in accordance with the Act directly to an independent administrator. Musical Works Fund:

- Music Publishers Subfund
- Writers Subfund

Claims filed for more than one subfund must be filed separately; and (5) identification of at least one musical work or sound recording establishing the basis for the claim. If a claimant moves or has a name change after filing a claim, the claimant must notify the Copyright Office of the change. Note: Changes must be sent to the CARP address.

Deadlines for Filing Claims

By statute, the Copyright Office must receive claims during the months of January and February following the year for which royalties are sought. The Copyright Office will accept claims bearing January and February U.S. postmarks by the U.S. Postal Service. Failure to file a claim on a timely basis forfeits a person's claim to any portion of the previous calendar years funds. Claims must be sent to the CARP address noted below. Claims filed

Interested copyright owners and the American Federation of Musicians or the American Federation of Television and Radio Artists appoint an independent administrator by March 31 to manage and distribute royalty payments to Nonfeatured Vocalists or nonfeatured Musicians, respectively.

Distribution of Royalties

After the filing deadline, the Librarian places a notice in the Federal Register to ascertain whether there are any controversies among the claimants as to the proper distribution of royalties. If there are no controversies, i.e., claimants have settled among themselves, the Library of Congress' Copyright Office distributes the royalties in accordance with the settlement agreements. If there are controversies, the Librarian selects a CARP to distribute the royalties, and the parties bear the entire cost of the proceeding in proportion to their share of the distribution.

Public Inspection of Claims

Claims may be viewed and photocopied Monday through Friday, excluding Federal holidays, from 8:30 a.m. to 5 p.m. in the Public Records Office, Licensing Division, Copyright Office LM-458, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C.

Regulations Governing the Distribution of DART Royalties

Before filing DART claims, claimants should consult the regulations governing the distribution of DART royalties in order to comply with statutory requirements. These regulations are found in 37 CFR 251 and 259. They are also available in law libraries or by contacting the Copyright Office.

Where Can One Call for More Information?

Call (202) 707-8380 for general information and (202) 707-8150 to inquire about amounts in the royalty pool.

What Is the CARP Address?

Claims, general correspondence, and statements should be sent to: Copyright Arbitration Royalty Panel, P.O. Box 70977, Washington, D.C. 20024.

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Proof of Delivery

I hereby certify that on Friday, November 08, 2019, I provided a true and correct copy of the Reply to Response in Opposition to AARC's Motion to Dismiss Eugene Curry to the following:

Curry, Eugene, represented by Eugene Curry Mr., served via Electronic Service at lambchopsmusic@voicenet.com

circle god network inc d/b/a david powell, represented by david powell, served via Electronic Service at davidpowell008@yahoo.com

Signed: /s/ Linda R Bocchi